THE DAILY CLARION

DECISIONS OF THE HIGH COURT ERRORS AND APPEALS.

OCTOBER TERM, 1866.

Robert K. Evans, by Guardian,) 10,346. vs. E. S. Fisher, Executor. Chief Instice Handy delivered the Opinion of the Court.

continued.)

Paine vs. Pendl-ston, 38 Miss., 320, alsond lied on, was a petition of like nature; als it appeared, from the proceedings in retion to the administration; that there were assets in the hands of the Administrator largely exceeding the amount of the debt brought-against the estate, which had never been aeministered or accounted for by the Administrator. It was held, that that was a good ground for refusing to decree a sale of the lands; and if the assets were wasted by the Administrator, the creditor's remedy would be against the Administrator and sureties on his bond, and that the devestant would be no good ground for ordering a wa' of the lands, anless the creditor's had eximusted all refinedy against the Administrator and his sureties. It is to be observed that neither of these last two cases gives any support to the position, that the question of sufficiency of the personal assets, is to be determined by the condition of the estate at the time of the testator's death, but, on the contrary, they sppear to recognize the principles, that the sufficiency is to be determined during the course of administration. But they both hold, that, in case of a devastavit, the creditor's remedy would at least in the first instance, be upon the Administrator and his sureties. Thus the ultimate liability of the lands for the payment of the debts, in case of insufficiency of the personalty and of the insolvency of the Administrator and his sureties, is recognized.

The extent to which these cases go is, that the lands will not be decreed to be sold in the lands will not be decreed to be sold in the lands will not be decreed to be sold in the lands will not be decreed to be sold in the lands will not be decreed to be sold in the lands will not be decreed to be sold in the lands will not be decreed to be sold in the lands will not be decreed to be sold in the lands will not be decreed to be sold in the lands will not be decreed to be sold in the lands will not be decreed to be sold in the lands will not be decreed to (CONTINUED.)

of the creditors. We have above seen that both the real and personal assets were equally bound for the payment of the debte : and the general rule in such case is, that the creditors may resort to estable the analysis of the subjection of a fund to which he is interested. Is not without remedy, under the dectrine of usrahalling of assets. The equilable rule, in reference to such cases is that "if a person having a claim upon two funds, chosens to resort to the only fund upon which an other has a claim, that other person shall stand in his place, for so must happen the find. And it is an established rule, that if the realitory proceed against the real estate, descended or derived, the hear or deriver, who has sustained the lass, shall be allowed to stand in the place of the appealant reality realitor, to relimbers hisself out of find personal estate in the hands of the Executor. The summer of the same. Orders from a distance scale for the hear or deriver, who has sustained the lass, shall be allowed to stand in the place of the appealant reality realitor, to relimbers hisself out of the personal estate in the hands of the Executor. The way were cases involved in personal estate in the hands of the Executor.

What Exercises, 15th According to this rule, a largeted property of the same. Orders from a distance scale in the same of the same. Orders from a distance scale in the same of the same. Orders from a distance scale in the same of the same. Orders from a distance scale in the same of the same. Orders from a distance scale in the same of the same. Orders from a distance scale in the same of the same of the same. Orders from a distance scale in the same of the same of the same. Orders from a distance with the first appropriated to the payment of the civility to the large scale in the same of the same. Orders from a distance with the first appropriate to the payment of the civility to the large scale in the same of the same. Orders from a continuance of the same. Orders from a continuance of the same. Orders fro

ROBERT K. EVANS, by his Guardian, 10,346. vs. E. S. Fisher, Executor. In this Case Mr. Justice Harris delivered a Dis

senting Opinion as follows: Scatting Opinion as focuses:

I do not concur in the opinion of the majority of
the court, in this case. The point to be decided, is
witcherif at the time of the death of the decedent
his personal assets were "sufficient," to pay all his
debts and liabilities, functal expenses and expense
of a ministration—the title to the real extact extent
in the helf, by our structes of descents and distributions can be divested or defected by the subsequent waste, misapplication, or destruction of such

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quiessed in it, no far at least as the neir at law is concerned, in not solling the property for the payment of the debta. But the fact that the Executor was allowed credit for all this property, and that no objection is made to the action of the court below in this respect must be taken as conclusive, in the case as hore presented, that no neject or omission of duty was committed by the Executor, and that no fault is impusable to the creditors. It must be taken that the conduct of both was without wrong.

Again—it is said, that since the personal assets were logt to the estate through the action of the Government, it must be presumed that the Government will make reparation for the lawry; and that the compensation fluis rendered will instead that they should be remitted to that, because it was the primary fund for the payment of their debta.

But that resource cannot be regarded, by the law, as a fund to which creditors must be remitted. The right of creditors, therefore, to proceed against a find which is clearly liable for thoir debts, cannot depend on what the law cannot regard as a fund twhich is clearly liable for thoir debts, cannot depend on what the law cannot regard as a fund the interest of the first way resort to the first was the primary from the personal estate here, is to consider it as long.

But if this resource could be taken into consideration in links case it should not affect the rights of the creditors may resort to the rights of the payment of the fund proceeding from the personal estate here, is to consider it as long.

But if this resource could be taken into consideration in links case it should not affect the rights of the property and the property of the payment of the property of the payment of the regard as a fund to which the creditors may resort to the fund property of assets; that it is debta; and the call the property of the payment of the reditors of the consideration of the creditors of the reditors of the redito

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ED. PICKETT,

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